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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

10006086-1

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on 6/16/06Signature *Desiree Reardon*Typed or printed name Desiree Reardon

Application Number

09/825,495

Filed

04/02/01

First Named Inventor

Bo SHEN

Art Unit

2157

Examiner

El Chanti, H.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

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applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

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attorney or agent of record. 35,398

Registration number \_\_\_\_\_

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attorney or agent acting under 37 CFR 1.34.

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6/16/06

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

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\*Total of \_\_\_\_\_ forms are submitted.

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Remarks Accompanying Pre-Appeal Brief Request For Review

In response to the final Office Action dated April 18, 2006, Applicant respectfully requests a review of the final rejection in the above-identified application. Applicant respectfully submits that the Examiner's rejections of the Claims 1-25 under 35 U.S.C. §102(e) as being anticipated by Duursma et al (6,643,690) is improper as an essential element needed for a proper prima facie rejection is missing (e.g., the teaching of all of the recited claim limitations).

Rejection under 35 U.S.C. §102 (e)

KEY CLAIM LIMITATIONS THAT ARE NOT MET BY THE CITED REFERENCES

Claim 1 includes the feature "intelligently routing the computing device application service request over the network to the selected application service provider server to perform the requested application service."

In the final Office Action, the Examiner has referenced col. 8 lines 34-Col. 9 lines 52 of Duursma et al. as containing subject matter that anticipates the aforementioned features of Claim 1 (Claims 12 and 22 contain similar features). Specifically, the Examiner equates the providing of applications of Duursma et al. with the performing of applications of the Present invention (emphasis added).

Applicant respectfully provides the Webster online definition of the two distinct and dissimilar terms.

**provide** function: *verb*

2 a : to supply or make available (something wanted or needed) <provided new uniforms for the band>; *also* : afford <curtains provide privacy> b : to make something available to <provide the children with free balloons>

**perform** Function: *verb*

**2 : carry out, do**

*intransitive senses*

**1 : to carry out an action or pattern of behavior**

In the current Office Action, the Examiner makes reference to Duursma et al. in supporting the grounds of rejection. However, Applicant respectfully states that Duursma does not teach or anticipate an application server performing the act but instead teaches a server providing the application to the client node, a distinct and dissimilar format, goal and objective as is clearly shown in the definitions provided by Webster online (emphasis added).

For example, in the abstract Applicant understands Duursma et al. to teach that the application information can include the minimum capabilities required of client nodes for executing the application. Moreover, at Column 9 lines 10-15, Applicant understands Duursma et al. to teach that the client node can run multiple application programs through one connection with the server. Additionally, at Column 9 lines 35-40, Applicant understands Duursma et al. to teach that if the client node wants to launch a second application the server will return application-related information such as application name and capabilities needed by the client node for the second application to run.

Thus, Applicant again submits that the application servers of Duursma et al. do not teach or anticipate intelligently routing the computing device application service request over the network to the selected application service provider server to perform the requested application service. Instead, Applicant understands Duursma et al. to provide the application to the client and evaluate the client to ensure the client has the capabilities needed for the application to run (emphasis added).

For this reason, Applicant respectfully states that Duursma et al. does not anticipate the features of simulation as claimed in Independent Claims 1, 12 and 22 and as such the rejection under 35 U.S.C. §102(e) is improper should be reversed as an essential element needed for a proper prima facie rejection is missing.

Additional arguments provided on pages 9-10 of the response to the Final Office Action dated January 30, 2006 are also referenced.

Furthermore, Claim 1 (Claim 22 contains similar features) includes the feature “utilizing a predetermined application criteria to intelligently select the application service provider.”

In the final Office Action, the Examiner has referenced col. 8 lines 34-Col. 9 lines 52 of Duursma et al. as containing subject matter that anticipates the aforementioned features of Claim 1 (Claim 22 contains similar features).

In the current Office Action, the Examiner makes reference to Duursma et al. in supporting the grounds of rejection. However, Applicant respectfully states that Duursma does not teach or anticipate using a predetermined application criteria to intelligently select the application service provider. Instead, Applicant understands Duursma to teach server selection based on real time load determination and present application availability, a distinct and dissimilar format, goal and objective (emphasis added).

Specifically, at Column 8 lines 58-65, Applicant understands Duursma et al. to teach the master node considers load balancing and application program availability to determine which server can handle the request. Additionally, at Column 5 lines 40-53, Applicant understands Duursma et al. to teach that the master server node can direct the client node to a particular server node on which to execute an application based on the list of available servers and corresponding load levels. Additionally, at Column 7 lines 20-30,

Applicant understands Duursma et al. to teach the master server node taking load-balancing and application availability into account when indicating to the client node that the sought-after application is available on server(emphasis added).

Thus, Applicant again submits that the application servers of Duursma et al. do not teach or anticipate utilizing a predetermined application criteria to intelligently select the application service provider. Instead, Applicant understands Duursma et al. to teach and anticipate real time load determination and present application availability to select the application server (emphasis added).

For this additional reason, Applicant respectfully states that Duursma et al. does not anticipate the features of simulation as claimed in Independent Claims 1 and 22 and as such the rejection under 35 U.S.C. §102(e) is improper should be reversed as an essential element needed for a proper prima facie rejection is missing.

Additional arguments provided on pages 10-11 of the response to the Final Office Action dated January 30, 2006 are also referenced.

In addition, Claim 1 (Claims 12 and 22 contain similar features) includes the feature “developing a register for said application service provider, said register qualifying said application servers based on the parameters of the services provided by the application service providers.”

In the final Office Action, the Examiner has referenced col. 8 lines 34-Col. 9 lines 52 of Duursma et al. as containing subject matter that anticipates the aforementioned features of Claim 1 (Claims 12 and 22 contains similar features).

In the current Office Action, the Examiner makes reference to Duursma et al. in supporting the grounds of rejection. However, Applicant respectfully states that Duursma does not teach or anticipate developing a register for said application service

provider, said register qualifying said application servers based on the parameters of the services provided by the application service providers. Instead, Applicant understands Duursma to teach evaluating the client credentials and then authorizing the list of available services based on the client's authentication (emphasis added).

Specifically, at Column 6 lines 40-50, Applicant understands Duursma et al. to teach that from the user credentials and the application-related information, the server can also determine which application programs hosted by the application servers are available for use by the user of the client node. Additionally, at Column 8 lines 15-30, Applicant understands Duursma et al. to teach that the server requests the user credentials from the client node to authenticate access to the second application program. Upon a successful authentication, the client node and server establish the second connection and exchange information regarding the execution of the second application program.

Thus, Applicant again submits that the application servers of Duursma et al. do not teach or anticipate developing a register for said application service provider, said register qualifying said application servers based on the parameters of the services provided by the application service providers. Instead, Applicant understands Duursma et al. to teach and anticipate qualifying a user.

For this further reason, Applicant respectfully states that Duursma et al. does not anticipate the features of simulation as claimed in Independent Claims 1, 12 and 22 and as such the rejection under 35 U.S.C. §102(e) is improper should be reversed as an essential element needed for a proper prima facie rejection is missing.

Additional arguments provided on pages 11-12 of the response to the Final Office Action dated January 30, 2006 are also referenced.